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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Implementation of the Local Competition  
Provisions in the Telecommunications Act  
of 1996

CC Docket No. 96-98

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OPPOSITION OF SBC COMMUNICATIONS INC.  
TO WORLD COM PETITION FOR WAIVER

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**I. INTRODUCTION AND SUMMARY**

WorldCom's waiver request is nothing more than a petition for reconsideration offered under the guise of a waiver. In fact, every single argument offered in this waiver request already has been considered and rejected by the Commission. WorldCom thus has not come close to showing the "extraordinary circumstance" that is a prerequisite for a waiver of the carefully tailored special access conversion rules adopted in the *Supplemental Order Clarification*.<sup>1</sup> Moreover, a waiver of the comingling prohibition would be unlawful insofar as it would effectively require unbundling of a new network element – an individual channel of a DS-3 facility – that has yet to be identified by the Commission. It also would raise a number of administrative and operational concerns that WorldCom wholly ignores. For these reasons, WorldCom's petition must be rejected.

But there is another reason, as well, why WorldCom's petition should be rejected. The 1996 Act requires incumbent LECs to provide access to UNEs only when CLECs would be

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<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 at para. 23 (rel. June 2, 2000) (*Supplemental Order Clarification*).

impaired without such access. Here, WorldCom claims already to be providing local dialtone service over 20,000 DS-1 circuits that it seeks to convert to UNEs. If, indeed, that is the case, WorldCom could not possibly be impaired in its ability to provide such services without converting these DS-1 circuits to UNEs.

The Commission recognized in the *Supplemental Order Clarification* that, in certain respects, the impair analysis in the *UNE Remand Order* did not adequately address special access conversions. It stated that it would issue a Public Notice in early 2001 to obtain additional information and comment on how the impair analysis should apply to special access circuits. In the meantime, the Commission should not whittle away at the compromise effected in the *Supplemental Order Clarification*. To the extent the Commission revisits that compromise – and that is exactly what WorldCom asks the Commission to do, notwithstanding its packaging of its request as a waiver – it should do so only in the context of a complete review of these rules – including a review of how the impairment test should apply to special access circuits.

## II. ARGUMENT

The *Supplemental Order Clarification* reflects a careful balance of conflicting considerations. On the one hand, the Commission sought to give CLECs access to unbundled network elements (UNEs), including preexisting combinations of network elements, to the extent that they would be impaired in their ability to provide particular services without such access. On the other hand, the Commission was concerned that “permitting the use of combinations of unbundled network elements in lieu of special access services could cause substantial market dislocations and would threaten an important source of funding for universal service.”<sup>2</sup> The

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<sup>2</sup> *Supplemental Order Clarification* at para. 7.

three options pursuant to which CLECs are permitted to convert special access circuits to UNEs are the result of a carefully crafted compromise developed by a cross-section of industry participants.

Three critical components of that compromise are: (1) the restrictions on co-mingling; (2) the collocation requirements for options 1 and 2; and (3) the local service usage requirements. WorldCom argued vehemently against each of those components in a series of *ex partes* that it filed prior to the issuance of the *Supplemental Order Clarification*.<sup>3</sup> The Commission rejected these arguments. Now, having failed to seek reconsideration of the *Supplemental Order Clarification*, WorldCom asks the Commission to waive these same requirements. Its waiver request, however, simply repeats the arguments that the Commission previously considered and rejected. It does not show the extraordinary circumstances necessary for a waiver and, therefore, must be denied.<sup>4</sup>

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<sup>3</sup> 10 March, 2000 [sic] Letter of Chuck Goldfarb, Director Law and Public Policy, MCI WorldCom, to Larry Strickling, Chief, Common Carrier Bureau; March 22, 2000, Letter of Lori Wright, Senior Manager, Regulatory Affairs, MCI WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission; 4 April, 2000 [sic] Letter of Chuck Goldfarb, Director, Law and Public Policy, MCI WorldCom, to Larry Strickling, Chief, Common Carrier Bureau at 7 (*April 4 Ex Parte*); 11 May, 2000 [sic] Letter of Chuck Goldfarb, Director, Law and Public Policy, MCI WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission; May 18, 2000, Letter of Bradley Stillman, Senior Policy Counsel, Strategic Advocacy, MCI WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission; June 21, 2000, Letter of Chuck Goldfarb, Director, Law and Public Policy, MCI WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission.

<sup>4</sup> See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“a waiver is appropriate only if special circumstances warrant a deviation from the general rule”); *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970) (special circumstances beyond those considered during regular rulemaking required to justify a waiver). In *Industrial Broadcasting*, the court concluded that the Commission properly rejected a waiver application that, like WorldCom’s petition, simply raised the same arguments previously considered by the Commission in a rulemaking. *Industrial Broadcasting*, 437 F.2d at 682 (holding “a heavy burden traditionally has been placed upon one seeking a waiver to demonstrate that his arguments are substantially different from those which have been carefully considered at the rulemaking proceeding”).

### A. Comingling Requirement.

In its petition, WorldCom asks the Commission to waive the Order's restriction on commingling loops or loop-transport combinations with tariffed special access services.<sup>5</sup> WorldCom further appears to suggest that, if it is permitted to multiplex (and thus commingle) UNE loops or loop-transport combinations onto special access transport facilities (such as DS-3s), the price of the special access transport facility should be ratcheted down as individual circuits (or channels on the facility) are converted to UNE pricing.<sup>6</sup>

WorldCom seeks to justify this waiver on the ground that its network is "unique" in that it has been configured to take advantage of scale economies. It claims in this regard that it has extended DS-3 trunks (many of which have been leased out of ILEC special access tariffs) as far as possible into ILECs' networks and uses DS-1s to carry either local or dedicated access traffic to and from customer premises and more distant end offices to the DS-3s, where traffic is multiplexed up or down. WorldCom asserts that approximately 20,000 of its leased DS-1s carry exclusively local and/or switched access traffic and almost all of these are commingled onto ILEC special access multiplexing and/or access DS-3 services.<sup>7</sup> It claims that, in order to convert these circuits to UNEs, it would have to groom them off of the DS-3 trunks used for special access traffic, thereby unnecessarily raising its costs. It also argues that on a going-

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<sup>5</sup> WorldCom Petition at 11.

<sup>6</sup> *Id.* at 3 ("Conversions [of special access circuits] pursuant to this waiver are subject to the following restrictions: (a) WorldCom must continue to pay the full access service price for the *remaining* access multiplexing and/or access transport services over which the UNE traffic travels; . . .").

<sup>7</sup> *Id.* at 8. WorldCom suggests that ILECs do not offer multiplexing as a UNE. As far as SBC is concerned, that statement is incorrect; SBC does offer multiplexing as a UNE.

forward basis, it would have to operate separate local dialtone and special access transport networks.

Each of these arguments has already been considered and rejected by the Commission. For example, in an *ex parte* filed on April 4<sup>th</sup>, WorldCom urged the Commission to eliminate any restriction on commingling on the grounds that such a prohibition would “force[] needless inefficiencies on competitive carriers” by requiring them “to operate two overlapping networks,”<sup>8</sup> and would “needlessly take down customers’ services during any circuit migration.”<sup>9</sup> The Commission rejected these arguments,<sup>10</sup> concluding that it could not find on the record before it that removing the prohibition would not lead to the use of UNEs solely or primarily to bypass special access services.<sup>11</sup>

WorldCom also has not shown that its network is in any way unique, or that it faces unforeseen extraordinary circumstances that would justify a waiver of the commingling restriction. To the contrary, WorldCom previously argued in this proceeding that the very circumstances it presents in its waiver are **not** unique to WorldCom. Specifically, in asking the Commission in its *April 4 Ex Parte* to reject comingling restrictions, WorldCom claimed that, “[t]o take advantage of economies of scale, MCI WorldCom and **other CLECs** try to extend their DS-3 trunks as far into the ILEC network as possible, and use DS-1s to bring traffic from more distant end offices to the DS-3. Those DS-1s can carry local traffic and non-local

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<sup>8</sup> 4 April, 2000 [sic] Letter of Chuck Goldfarb, Director, Law and Public Policy, MCI WorldCom, to Larry Strickling, Chief, Common Carrier Bureau at 7 (*April 4 Ex Parte*).

<sup>9</sup> *Id.*

<sup>10</sup> *Supplemental Clarification Order*, FCC 00-183 at para. 28 (“We further reject the suggestion that we eliminate the prohibition on ‘co-mingling’ . . . in the local usage options discussed above.”) (citing *MCI WorldCom Apr. 4, 2000 Letter* at 6-8).

<sup>11</sup> *Id.*

traffic.”<sup>12</sup> Because, as WorldCom has already conceded, there is no reason to believe that WorldCom’s network architecture is in any different from that of numerous other CLECs, WorldCom has failed to show that it faces the “extraordinary circumstances” necessary for a waiver.<sup>13</sup>

Moreover, WorldCom effectively asks the Commission to establish a new network unbundling requirement under the guise of a waiver. In the *UNE Remand Order*, the Commission required ILECs to offer unbundled access to dedicated interoffice transmission facilities.<sup>14</sup> The Commission did not consider – much less require – unbundling of the individual channels on those facilities. WorldCom’s petition is thus mis-cast. The Commission cannot establish new unbundling requirements by granting WorldCom a waiver. A waiver is a process by which the Commission refrains from applying an **existing** requirement; it is not a process by which new obligations – particularly new unbundling obligations - can be created. Rather, as section 251(d) expressly provides, regulations to implement section 251, including the unbundling provisions of section 251(c)(3), must be established through rulemaking procedures.

Even if a waiver were a permissible vehicle for the establishment of unbundling obligations, WorldCom has presented no evidence that it is impaired in its ability to provide local services if it is denied unbundled access to individual channels of dedicated transport facilities (such as DS-3s). Indeed, its petition confirms that WorldCom is in no way impaired without such access. According to WorldCom, it is providing its customers local switched service over

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<sup>12</sup> *April 4 Ex Parte* at 6 (emphasis added).

<sup>13</sup> *See supra* note 4.

<sup>14</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, para. 321, and Appendix C at 7 (1999) (*UNE Remand Order*).

20,000 DS-1 circuits leased out of ILEC special access tariffs. WorldCom's own petition thus definitively establishes that WorldCom is not impaired in its ability to provide local DS-1 services if it is denied unbundled access to individual channels of DS-3 (and higher) interoffice transmission facilities. For this reason, as well, its request for a waiver of the commingling restriction must be denied.

Finally, WorldCom's request raises a host of operational and administrative issues that WorldCom fails utterly to address, and which would have to be resolved before the Commission could grant WorldCom's petition. For example, in order to ensure compliance with the legal and regulatory requirements for unbundled network elements, and also to insulate SBC retail personnel from access to proprietary information about CLEC purchases of UNEs, SBC (like other local exchange carriers) has created separate organizations for the provision of access services and UNEs. Each organization is specially trained to handle the unique provisioning, repair, maintenance, billing, tracking and reporting requirements for their respective facilities, and maintain separate facility inventories. WorldCom has failed even to consider how this separation – which, as noted, helps not only to ensure compliance with all applicable regulations but to create a “Chinese wall” between SBC's retail and wholesale units – could be squared with co-mingled facilities. Nor has it considered all the work that would be required to breach this wall.

Moreover, permitting CLECs to commingle UNEs and special access circuits would require SBC to modify its billing systems. These systems currently are not capable of pro-rating DS-3 circuit costs based on the percentage of channels that are purchased as UNEs versus access. Given the short comment cycle in this proceeding, SBC cannot quantify precisely the cost and

time necessary to modify its billing systems, but estimates that it would take months to make the required changes.

In addition, permitting commingling would require modifications to SBC's contracts and customer accounts with WorldCom. Currently, WorldCom purchases UNEs and special access circuits through separate subsidiaries. If it were to commingle UNE DS-1s used to provide local service with dedicated access circuits, WorldCom's contracts and accounts would have to be modified to identify which WorldCom subsidiary is the responsible customer for the commingled facility account. Accordingly, WorldCom's request for a waiver of the commingling restriction in the *Supplemental Clarification Order* should be denied.

#### **B. Customer Usage Restrictions**

In addition to seeking a waiver of the comingling requirement, WorldCom seeks a waiver of the customer usage restrictions. It claims that "[i]n WorldCom's network ... it frequently is not possible for it to either easily identify or predict individual customers' usage patterns in a way that would enable it to make use of the options. Most particularly, it is impossible to predict how many switched access long-distance calls a particular customer might make or receive in the aggregate on all of the local channels provided by WorldCom."<sup>15</sup> It asks the Commission to waive the usage restrictions in favor of a presumption that any access circuit that terminates at a Class 5 switch is carrying local traffic.

Here again, WorldCom simply recycles the arguments it presented prior to the adoption of the *Supplemental Order Clarification*. Indeed, the only difference in the argument is that, whereas in its April 4 *ex parte*, WorldCom proposed an irrebutable presumption that a circuit

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<sup>15</sup> WorldCom Petition at 14.

that terminates in a Class 5 switch is being used to carry local or switched access traffic, it now proposes a presumption that could be rebutted through the audit process.

This slight retreat from the hard-line position it previously took might properly be presented in a petition for reconsideration, but it is certainly not grounds for a waiver. A waiver is warranted only when a carrier can show that it faces extraordinary circumstances not contemplated by the underlying rule. WorldCom's alleged circumstances, though, already have been laid before the Commission in a series of *ex parte* filings, and rejected by the Commission in no uncertain terms.<sup>16</sup>

Moreover, WorldCom does not even purport to show that it faces extraordinary circumstances. While it claims that it in its network "it frequently is not possible for it to either easily identify or predict individual customers' usage patterns," it does not explain why it is different from any other CLEC in this regard. It does not explain why, for example, CLECs, such as Intermedia, Allegiance, Time Warner can determine whether their customers meet the traffic thresholds, but it cannot.

### **C. Collocation Requirement**

WorldCom also seeks a waiver of the requirement in options 1 and 2 that loop/transport combinations terminate in a collocation space. It claims that, in the *UNE Remand Order*, the Commission explicitly rejected arguments that collocation should be required as a precondition to obtaining access to combinations. It also argues that this requirement is unnecessary because "while many of WorldCom's local and dedicated access lines ultimately terminate at collocation

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<sup>16</sup> *Supplemental Clarification Order*, 15 FCC Rcd 9587, at para. 25 ("We do not adopt MCI WorldCom's proposal that incumbent LECs should presume that any circuit that a requesting carrier connects to a port on a 'Class 5' switch or its equivalent is used exclusively to provide local service. There is no basis to assume that every circuit that terminates in a certain type of switch is being used exclusively for local traffic . . .").

arrangements at a WorldCom serving wire center, many others do not” and that “the existence or lack of collocation is not indicative of whether the circuits are local or dedicated access circuits.”<sup>17</sup>

Here, again, WorldCom has not come close to showing the extraordinary circumstances necessary for a waiver. As an initial matter, its characterization of the *UNE Remand Order* is both inaccurate and irrelevant. As the Commission observed in the *Supplemental Order Clarification*, “the limited collocation requirements contained in local usage options 1 and 2 are ... consistent with both the [*UNE Remand Order*], in which we stated that any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements, and with the *Supplemental Order*, in which we referred to a requesting carrier’s provision of local exchange service terminating at a collocation arrangement as an example of significant local usage.”<sup>18</sup>

More importantly, WorldCom does not offer anything new in its waiver request. Indeed, the only argument it offers repeats virtually *verbatim* the argument WorldCom advanced in an April 4, 2000 *ex parte*. There, as here, WorldCom claimed “[t]he fact that a particular circuit terminates or does not terminate in a collocation arrangement does not mark the circuit as an access circuit or a local circuit.” The Commission did not find that argument convincing. It found that the collocation requirements in options 1 and 2 “should not impose an undue burden on requesting carriers because they require only that the circuit that the requesting carrier seeks to convert terminate at a single collocation arrangement in the incumbent LEC’s network.”<sup>19</sup> It

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<sup>17</sup> WorldCom Petition at 9.

<sup>18</sup> *Supplemental Order Clarification* at para. 24.

<sup>19</sup> *Id.* at para. 24.

also found that it would be most efficient for incumbent LECs to connect loop/transport combinations directly to a requesting carrier's collocation cage. As with its other claims, WorldCom's rehash of its previously rejected argument does not establish the exceptional circumstances required for a waiver of the special access conversion test.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should reject WorldCom's petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher M. Heimann", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of the **Opposition of SBC Communications, Inc to WorldCom's Petition for Waiver** has been served on the party below via hand delivery on this 2<sup>nd</sup> day of October 2000.

By:   
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